

REMARKS

In accordance with the forgoing, the specification and claim 1 have been amended, claims 2-10 have been canceled without prejudice and/or disclaimer of the subject matter contained therein, and new claims 25-35 have been added. Support for the new claims can be found, for example, at paragraphs [0063] through [0066]. Claims 1 and 25-35 are pending and under consideration.

The specification has been amended merely to insert the application and patent numbers for the related applications. The amendments do not relate to patentability and no new matter has been added. Accordingly, entry of the amendments to the specification is respectfully requested.

Claims 1-6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,213,098 to Bennett et al. ("Bennett") in view of U.S. Patent No. 5,531,768 to Alferness ("Alferness"). Claims 7-10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bennett and Alferness and further in view of U.S. Patent No. 6,397,100 to Stadler et al. ("Stadler"). Claims 2-10 have been canceled, without prejudice and/or disclaimer of the subject matter contained therein, rendering the rejection of claims 2-10 moot. In view of the amendments to claim 1 and the new claims, the Examiner's rejection is respectfully traversed.

Independent claims 1 and 30 set forth a method and device that includes delivering an ESS therapy using a first ESS rate, detecting a myocardial ischemia condition subsequent to delivering of the ESS therapy using the first ESS rate, and delivering the ESS therapy using a second ESS rate different from the first ESS rate subsequent to the detected myocardial ischemia condition. None of the referenced prior art documents, alone or in combination, teach or suggest this feature. Therefore, for at least this reason, independent claims 1 and 30 are patentably distinguishable from Bennett, Alferness and Stadler.

Claims 25-29, and 31-35 depend directly or indirectly from either independent claims 1 or 30 discussed above, and are submitted as being patentable for the reasons that claims 1 and 30 are believed to be patentable as well as for the reason that these claims further distinguish over the referenced prior art documents.

Accordingly, withdrawal of the rejections is respectfully requested.

Applicant asserts that the remarks presented herein are fully responsive to the Office Action and are sufficient to overcome the rejections presented in the Office Action. However, there may be other arguments to be made as to why the pending claims are patentable. Applicant does not concede any such arguments by having not presented them herein. Applicant respectfully asserts that the present claims are in condition for allowance. Withdrawal of the instant rejections and issuance of a Notice of Allowance is respectfully requested.

Should any issues remain outstanding, the Examiner is urged to telephone the undersigned to expedite prosecution. The Commissioner is authorized to charge any deficiencies and credit any overpayments to Deposit Account No. 13-2546.

Respectfully submitted,

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